

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Madeleine Ayer	Team: Squad #13	CCRB Case #: 201903565	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 01/01/2019 5:25 PM	Location of Incident: 1472 Inwood Avenue	Precinct: 44	18 Mo. SOL 7/1/2020	EO SOL 2/15/2021	
Date/Time CV Reported Sat, 04/13/2019 2:06 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 04/26/2019 11:16 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Kenny Ortiz	20334	959021	044 PCT
2. POM Roberto Vargas	04043	954392	044 PCT
3. POM Ariel Gonzalez	21041	958646	044 PCT
4. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jeyson Bisoño	12353	960252	044 PCT
2. POM Julio Nunezcompres	23506	959852	CW T TF
3. POF Nicole Spinelli	12688	961320	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Roberto Vargas	Abuse: Police Officer Roberto Vargas searched the vehicle in which § 87(2)(b) was an occupant.	
B.POM Kenny Ortiz	Abuse: Police Officer Kenny Ortiz searched the vehicle in which § 87(2)(b) was an occupant.	
C.POM Ariel Gonzalez	Abuse: Police Officer Ariel Gonzalez searched the vehicle in which § 87(2)(b) was an occupant.	
D. An officer	Abuse: An officer searched the vehicle in which § 87(2)(b) was an occupant.	

### Case Summary

On April 13, 2019, § 87(2)(b) filed this complaint with IAB by phone. The CCRB received this complaint on April 26, 2019.

On January 1, 2019, at approximately 5:25 p.m., § 87(2)(b) was driving an SUV on Inwood Avenue in the Bronx, while his friend, § 87(2)(b) was standing on the SUV's running board. In front of 1472 Inwood Avenue, Police Officers Roberto Vargas and Kenny Ortiz, both of the 44th Precinct, pulled over § 87(2)(b) Police Officer Ariel Gonzalez and Police Officer Jeyson Bisano, both of the 44th Precinct, and additional officers also arrived. PO Vargas, PO Ortiz, PO Gonzalez, and an unidentified officer searched the vehicle § 87(2)(b) had been driving (**Allegations A-B – Abuse of Authority: Vehicle Search, § 87(2)(g) Allegation C – Abuse of Authority: Vehicle Search, § 87(2)(g) Allegation D – Abuse of Authority: Vehicle Search, § 87(2)(g)** § 87(2)(b) was arrested for § 87(2)(b) § 87(2)(b), and § 87(2)(b) was summonsed for § 87(2)(b)

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Several officers' Body Worn Camera (BWC) footage was obtained by the investigation. The videos are attached to IAs #45-52 and summarized in IA #110 (**Board Review 01**). There is no other video evidence in this case.

### Findings and Recommendations

**Allegation A – Abuse of Authority: Police Officer Roberto Vargas searched the vehicle in which § 87(2)(b) was an occupant.**

**Allegation B – Abuse of Authority: Police Officer Kenny Ortiz searched the vehicle in which § 87(2)(b) was an occupant.**

**Allegation C – Abuse of Authority: Police Officer Ariel Gonzalez searched the vehicle in which § 87(2)(b) was an occupant.**

**Allegation D – Abuse of Authority: An officer searched the vehicle in which § 87(2)(b) was an occupant.**

§ 87(2)(b) testified that he was driving a Nissan Pathfinder that belonged to his brother, § 87(2)(b) along Inwood Avenue. The vehicle had a dead engine. As § 87(2)(b) steered the vehicle toward a parking spot nearby, § 87(2)(b) and § 87(2)(b) pushed the vehicle from behind. § 87(2)(b) was pulled over by PO Vargas and PO Ortiz in front of 1472 Inwood Avenue. § 87(2)(b) had not realized at the time he was pulled over, but later learned, that § 87(2)(b) had walked across the street and § 87(2)(b) had been standing on the vehicle's running board (the narrow step fitted under the doors). § 87(2)(b) exited his vehicle and explained what the civilians were doing to PO Vargas and PO Ortiz. He and § 87(2)(b) were promptly handcuffed and placed in the back of the police vehicle. PO Vargas radioed for backup and, after several minutes, about six additional officers arrived in two or three cars. From the back of the police vehicle, § 87(2)(b) saw PO Vargas, PO Ortiz, and two of the officers who had just arrived lean into the front and back seats of § 87(2)(b)'s vehicle and look around its interior. § 87(2)(b) was transported from the scene, but later learned that the vehicle had been released into § 87(2)(b)'s custody (**Board Review 02**).

§ 87(2)(g)

§ 87(2)(b) testified that only two officers who were

neither PO Vargas nor PO Ortiz searched the vehicle, including the front and backseats, but not the trunk. Either PO Vargas or PO Ortiz told him to take the vehicle (**Board Review 03**). § 87(2)(b) testified that he did not witness the vehicle search, though § 87(2)(b) later told him about it (**Board Review 04**).

PO Vargas and PO Ortiz's BWC footage capture the entire time they were present during this incident (**Board Review 05-06, Board Review 07**). In part two of PO Vargas' BWC footage (**Board Review 06**), § 87(2)(b) appears at the 17:23:16 red timestamp, located on the left side of the footage. At this time, PO Vargas tells § 87(2)(b) in Spanish that he can take the car, which § 87(2)(b) agrees to do. At 17:24:53, PO Vargas says to someone off-screen in English, "If you want to check the car real quick." From 17:26:19 to 17:26:53, PO Gonzalez, identified via investigation, looks inside the driver's seat area and then shuts the front driver-side door. Neither PO Vargas nor PO Ortiz search the vehicle at any point. Their BWC footage does not reveal any other officer searching the car at any other point. BWC footage of PO Bisano (**Board Review 08**) captures PO Gonzalez, identified via investigation, searching the passenger seat area of the vehicle. From 17:25:01 to 17:25:31, PO Gonzalez opens the front passenger side door, looks inside, and shines his flashlight around. At 17:26:29, PO Gonzalez looks inside the driver's seat area. PO Bisano's BWC footage does not capture any other vehicle search. PO Gonzalez had no BWC footage of this incident.

PO Vargas and PO Ortiz testified that they pulled over § 87(2)(b) because they saw him run a red light and because § 87(2)(b) was "hanging off" the passenger-side running board, with his hands on the vehicle's roof rack. PO Vargas testified that when he stopped the vehicle, he intended to arrest § 87(2)(b) for reckless driving. Shortly after pulling him over, PO Vargas and PO Ortiz handcuffed § 87(2)(b) and § 87(2)(b). Either PO Vargas or PO Ortiz called for backup in case they needed someone to take the vehicle back to the stationhouse, and PO Gonzalez and his unidentified partner arrived shortly thereafter. Another police vehicle drove past the scene and stopped. Two officers got out of that vehicle, one of whom was PO Bisano, and approached the scene. § 87(2)(b) also appeared at some point during the vehicle stop. PO Vargas and PO Ortiz testified they left the vehicle with § 87(2)(b) and that it was never taken back to the stationhouse. Neither PO Vargas nor PO Ortiz recalled if the vehicle was searched. When presented with part two of his BWC footage, PO Vargas testified that he said, "If you want to check the car real quick," because he wanted an officer to check the vehicle to see if there was anything that was "not supposed to be there" before handing it over to § 87(2)(b). § 87(2)(b) though he testified that he did not have any reason to believe the vehicle contained contraband. PO Vargas did not know to whom he addressed the comment, though he said it might have been PO Gonzalez (**Board Review 09, Board Review 10**).

PO Gonzalez did not recall this incident. He identified himself as the officer visible in PO Vargas's BWC footage searching the vehicle, but said he still did not have an independent recollection of the incident. However, PO Gonzalez testified that it is procedure to search a vehicle after an arrest, even if that vehicle is not brought back to the stationhouse (**Board Review 11**).

The "automobile exception" to the warrant requirement of the Fourth Amendment permits a warrantless search of a vehicle if there is probable cause to believe that the vehicle contains evidence or contraband (People v. Galak, 81 N.Y.2d 463, 1993) (**Board Review 12**). In addition, whenever any property comes into police custody, an inventory search is to be conducted. If the contents to be inventoried are in a vehicle, that vehicle is subject to a search (NYPD Patrol Guide, Section 218-13) (**Board Review 13**).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

#### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 14**).
- PO Vargas has been a member of the NYPD for seven years. He has been a subject in two additional complaints, totaling two allegations, neither of which were substantiated. § 87(2)(g)
- PO Ortiz has been a member of the NYPD for four years. He has been a subject in six additional complaints, totaling eight allegations, two of which were substantiated. § 87(2)(g)
  - Case 201804152 involved a substantiated allegation of verbal discourtesy against PO Ortiz. The Board recommended Command Discipline A, which the NYPD imposed.
  - Case 201900058 involved a substantiated allegation of refusal to obtain medical treatment against PO Ortiz. The Board recommended Command Discipline A. The NYPD has not yet imposed discipline.
- PO Gonzalez has been a member of the NYPD for four years. This is the first complaint to which he has been a subject.

#### Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of February 13, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this incident (**Board Review 15**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 13

Investigator: \_\_\_\_\_

Signature                  Inv. Madeleine Ayer                  \_\_\_\_\_  
Print Title & Name                  Date

Squad Leader: \_\_\_\_\_

Signature	Print Title & Name	Date
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Reviewer: \_\_\_\_\_

Signature                      Print Title & Name                      Date